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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No.424 of 2006
Date of decision:2.5.2007

Commissioner of Income tax-III, Ludhiana

...Appellant

Versus

M/s Nahar Spinning Mills Ltd., 376, IAA, Ludhiana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Sanjiv Bansal, Advocate for the appellant.
Mr.Sanjay Bansal, Sr. Advocate with
Mr.Suman Dhiman, Advocate for the respondent.

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RAJESH BINDAL, J.

The revenue has approached this Court by filing the present appeal against order dated 29.11.2005 passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A" Chandigarh (for short 'the Tribunal), in ITA No.798/Chandi/2001 for the assessment year 1998-99 raising the following substantial questions of law:-

i) Whether on the facts and the circumstances of the case, the Hon'ble ITAT was right in law in holding that Sales Tax, and Central Sales Tax be excluded from the total turnover of the assessee while computing deduction u/s 80HHC?

ii) Whether on the facts and circumstances of the case, the Hon'ble ITAT was right in law in directing not to reduce 10% of the interest income from the profit of business for the purpose of computation of deduction under section 80 HHC of the I.T.Act?

While issuing notice, the question no.1 was not considered to be a question of law as the same was found to be covered against the revenue by a judgment of this court dated 22.5.2006 in ITA No.293 of 2005 in **Commissioner**

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of Income Tax-I, Ludhiana Vs. M/s Vardhman Polytex Ltd., Chandigarh Road, Ludhiana and accordingly notice was issued to the assessee only with reference to question No.2, which we proceed to deal with for final disposal, with the consent of counsel for the parties.

The assessee in the present case is engaged in the business of manufacture, trading and export of cotton yarn, woollen hosiery garments. The return for the assessment year in question was filed on November 30, 1998 declaring its income at Rs. 10,03,94,830/-. The same was processed under Section 143(1)(a) of the Act on March 17, 1999 at the income of Rs. 10,08,96,943/-. Statutory notice dated May 18, 1999 under Section 143(2) of the Act was served upon the assessee on May 22, 1999, which was followed by detailed questionnaire. During the course of assessment, it was found that assessee had declared income of Rs. 6,33,18,491/- as interest under the head 'Income from Other Sources'. During the assessment claim of the assessee that interest income shown by it under the head income from other sources is infact income chargeable under the head income from business and profession. This claim was sought to be made by the assessee during the course of assessment proceedings, by submitting a letter on October 14, 2000, which was beyond the period prescribed for filing of revised return. It was claimed that the assessee should be given the benefit of it for calculation of deduction under Section 80HHC of the Act but the claim made by the assessee was not accepted by the Assessing Officer and the interest income was reduced while computing income from business and profession and the same was separately assessed under the head 'Income from Other Sources'. The income so determined under the head income from business and profession only was considered for the purpose of calculating deductions under Section 80HHC of the Act.

Aggrieved against the order of assessment, the assessee preferred an appeal before the Commissioner of Income-Tax (Appeals) (for short, 'the CIT(A)'). Before the CIT (A) it was admitted by the assessee that the interest income was shown in the return as income from other sources. However, the CIT (A) accepted the plea raised by the assessee and held that the interest income declared by the assessee in the return, as income from other sources, is to be treated as business income for the purpose of calculation of deduction under Section 80HHC of the Act and thereafter referring to explanation (baa) thereof, directed the Assessing Officer to exclude 90% of such income. Aggrieved against

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the order passed by the CIT(A) on this issue, revenue went in appeal before the Tribunal raising following ground of appeal:-

> "The ld. CIT(A) has further erred both in law and on fact of the case in holding that interest income of Rs. 6,33,18,491/- is business income as against income from other sources taken by the AO for the purposes of computing deduction u/s 80HHC?"

A perusal of the order passed by the Tribunal shows that it did not at all deal with the issue raised by the revenue rather misdirected itself in referring to and relying upon the judgment in **Rani Paliwal Vs. Commissioner of Income-Tax, (2004) 268 ITR 220 (P&H),** which was not at all applicable in the facts and circumstances of the case. The issue involved in Rani Paliwal's case (Supra) was as to whether 90% of the gross interest received by the assessee, as included in the profit of business, was to be excluded or the net interest, which was answered in favour of the revenue. However, issue in the present case primarily was as to whether the income declared by the assessee under the head income from other sources could be claimed to be income from business and profession at the time of framing the assessment and for the purpose of computing the deduction under Section 80HHC of the Act. Since the issue has not at all been touched by the Tribunal, we deem it appropriate to remit the matter back to the Tribunal for considering the issue and pass fresh order after hearing counsel for the parties.

The parties are directed to appear before the Tribunal for further hearing on May 31,2007.

The appeal is disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

May 2 , 2007 **(M.M.Kumar)**
Pka **Judge**

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